

### REMARKS

This responds to the Office Action mailed on April 29, 2008.

Claims 1, 19, and 37 are amended, and no claims are cancelled or added; as a result, claims 1-37 remain pending in this application.

#### §112 Rejection of the Claims

Claims 1, 19 and 37 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description.

Claims 1, 19 and 37 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Applicant has removed the “song” language from these claims, and amended the claims to reflect that the audio element tracks comprise different instruments played in the same key in synchronization. Note that there is support for the audio tracks comprising different instruments played in synchronization in the specification, such as at p. 6, ln.8-16, and p. 5, col. 15. There is also support for playing multiple element tracks such as instrument tracks of the same musical key at p. 6, ln. 6. to create an audio track.

#### §103 Rejection of the Claims

Claims 1, 11-13, 17-19, 29-31 and 35-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke (U.S. 6,561,908), hereinafter Hoke.

Applicant notes that this is a single-reference §103 rejection, and requests that should a rejection be maintained, each element of the pending claims be shown in a prior art reference (MPEP 2144.03).

Hoke discusses a wagering game machine that can play different sound recordings without breaking rhythm by using a metronome system, such as by changing or switching sound recordings on a metronome tick when a game event occurs (*see*, col. 3, ln. 34-43). Sound recordings can be played simultaneously (*see*, col. 3, ln. 35), and sound causing game events

include making a losing selection in a game, winning a value, or reaching a bonus game event (*see, e.g.*, col. 8., ln. 20, 25, and 65-67).

The background and detailed description of Hoke teach that out-of-beat transitions between sound recordings being played back is the primary problem being addressed, and that succession between sound recordings is enabled by use of the disclosed metronome system.

The amended claims, in contrast, recite that a number of audio element tracks that comprise two or more instruments played in the same key in synchronization such that together they form an audio track are selected randomly or pseudo-randomly to create variation in the sound of the audio track made up of the various instruments played together in key. The pending claims address a problem different from that of Hoke, in that different components of a single audio track are combined in different ways using a random or pseudo-random selection to avoid player fatigue in hearing a track repeated during game play.

More specifically, Hoke does not teach playing audio element tracks that comprise two or more instruments played in the same key in synchronization such that together they form an audio track, as is recited in each of the pending amended claims. The Office Action argues on p. 17, ln 11 that playing multiple audio tracks to form a cohesive sound is taught in Hoke, but fails to cite a particular section of Hoke that teaches the limitations introduced in the amended claims. Hoke instead teaches that each sound file comprises a different song or sound effect, and that they may be played simultaneously such as when a game event causes a sound effect to be played in addition to a song.

Hoke's illustration of playing different sound recordings A-D in Figure 4 shows a sequential playing of different sound recordings, which are identified in the Office Action as being analogous to the ordered list recited in the pending claims. Applicant has further amended the claims to reflect that the ordered list is a random ordered list, reflecting that the tracks are selected randomly but that random selection may be done beforehand and implemented as a random list in addition to other embodiments such as run-time random selection.

Because Hoke fails to teach playing audio element tracks that comprise two or more instruments played in the same key in synchronization such that together they form an audio track, and further fails to consider random selection of audio element tracks but instead plays its various tracks to indicate specific game events associated with the tracks, the pending claims as

amended are believed to be patentably distinct from the prior art. Reexamination and allowance of these claims, and of their dependents, is therefore respectfully requested.

Claims 2 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke in view of Koenig et al. (U.S. 6,729,618), hereinafter Koenig.

Claims 3-10, 14-15, 21-28 and 32-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke in view of Koenig, and further in view of Kay (U.S. 6,087,578), hereinafter Kay.

Claims 16 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoke in view of Thagard et al. (U.S. 6,215,737), hereinafter Thagard.

These claims depend from claims believed to be in condition for allowance as explained above, and are therefore allowable as dependent on allowable base claims. Reexamination and allowance is therefore respectfully requested.

### CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 349-9581 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 349-9581

Date

July 29 2008

By

[Signature]

John M. Dahl

Reg. No. 44,639

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29 day of July, 2008.

Name

Zachary M. Carrion

Signature

[Signature]